No. 22-6896

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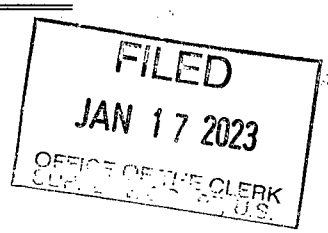

In The
Supreme Court of the United State

♦

KIM LYNN MASON,

Petitioner,

V.

JIM FARRIS, WARDEN OSP, ET AL.

Respondents.

♦

On Petition for Writ of Certiorari
To the Court of Criminal Appeals
Of Oklahoma

♦

Petition for Writ of Certiorari

♦

Kim Lynn Mason OKDOC #125881
Oklahoma State Penitentiary E-2-25
P.O. Box 97
McAlester, Oklahoma 74505-0097

NON-CAPITAL CASE

QUESTION PRESENTED

Whether due process demands that corrective judicial process in the nature of state writ of habeas corpus be available to expunge a void judgment for lack of jurisdiction when all other avenues of judicial relief are closed to a state prisoner.

Whether the 1866 territorial boundaries of the Cherokee Nation within the former Indian Territory of eastern Oklahoma constitute an "Indian reservation" in 2007 in the City of Vinita, County of Craig under 18 U.S.C. § 1151(a).

Whether the Craig County District Court was of competent jurisdiction to impose judgment, if not is judgment void and can it be vacated on writ of habeas corpus under Oklahoma Habeas Corpus Act.

Whether the "Mailbox Rule for appeals filed by pro se incarcerated prisoners applied to inmate's pro se civil action against prison officials, and thus appeal, which was turned over to correctional officials within thirty (30) days statute of limitations was timely filed; Petitioner an inmate did not have control over submission of his petition to the Oklahoma Court of Criminal Appeals and could never be sure that his petition would ultimately get stamped filed before the running of the statute of limitations.

PARTIES TO THE PROCEEDING

Petitioner Kim Lynn Mason was the petitioner in the district court and the petitioner in the Oklahoma Court of Criminal Appeals.

Respondent Jim Farris, Warden at Oklahoma State Penitentiary was the respondent in the district court and the respondent in the Oklahoma Court of Criminal Appeals.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kim Lynn Mason respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals Order Declining Jurisdiction is unpublished attached hereto. The District Court of Pittsburg County Order Denying the Petitioners Writ of Habeas Corpus is attached hereto.

JURISDICTION

The Oklahoma Court of Criminal Appeals issued an order declining jurisdiction on October 17, 2022, which was filed on October 31, 2022, on Petitioner's request for extraordinary relief which was denied by the District Court in an Order filed September 9, 2022. Both Orders are attached hereto. This petition is being filed within 90 days of the Oklahoma Court of Criminal Appeals denial and decline of jurisdiction filed October 31, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Indian Commerce Clause, the Supremacy Clause, the Due Process Clause, and the relevant provisions of Title 18 of the *U.S. Code and Title 22 of the Oklahoma Statutes, are forth herein.*

INTRODUCTION

In *U.S. v. Ramsey*, 271 U.S. 67 1926), this Court held that the federal government must be held to its word. Because the United States promised to reserve certain lands for tribes in the nineteenth century and never rescinded those promises, those lands remain reserved to the tribes today. In particular, these lands remain "Indian Country" within the meaning of the Major Crimes Act (MCA), which divests States of jurisdiction to prosecute "[a]ny Indian" who committed one of the offenses enumerated in Section 1153(a) of Title 18 of the U.S. Code while in "Indian country." 18 U.S.C. § 1153 (a) and under the General Crimes Act (GCA) (also known as the "Indian Country Crimes Act" (ICCA)); such crimes are subject to federal. Only the federal government may prosecute such crimes.

Oklahoma has, however, prosecuted many Indians for such offenses. Among them is petitioner, Kim Lynn Mason, a registered

member of the Shawnee Tribe. In 2007, Oklahoma prosecuted petitioner for crimes that all can agree occurred on the Cherokee Nation Reservation. The Cherokee Nation Reservation continues to exist today and is "Indian Country" within the meaning of the MCA. See *Hogner v. State*, 500 P.3d 629, 635 (Okla. Crim. App. 2021). As confirmed by the Court in *Hogner*, Oklahoma therefore lacked jurisdiction to prosecute petitioner for an enumerated major crime. The State never had jurisdiction to prosecute Indians for Major crimes committed in the Cherokee Nation Reservation, Indian Country; that authority belongs exclusively to the United States. See Former Preacher Charged for the Sexual Abuse of Five Minors 2021 WL 5357247 (D.O.J.) and Stilwell Man Charged with Sexual Abuse of a Child in Indian Country 2021 WL 2888107 (D.O.J.). Both cases date back past Petitioner's case in 2007.

Nevertheless, when petitioner sought writ of habeas corpus relief contesting Oklahoma Court of Criminal Appeals rejected his claim on the theory that *McGirt* is not retroactive. In its view, *Mc Girt* amounts to a mere "procedure rule" that determined only "which sovereign must prosecute major crimes committed by or against Indians within' Indian country. Despite this Court's emphatic holding that the State lacked power to prosecute Indians for major crimes on tribal lands, "the Oklahoma court believe that the *McGirt* rule affected 'only the manner of determining the defendant's culpability," and thus "imposed only procedural changes." Id. (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). Because it viewed *Mc Girt* as a new rule of criminal procedure the Oklahoma court held that this Court's holding did not apply retroactively to convictions that were final when *Mc Girt* was announced. (Citing *Teague v. Lane*, 489 U.S. 288 (1989). Petitioner contends that since Oklahoma lacked subject matter jurisdiction to prosecute him in the first place, as in McGirt's case as well, Petitioner's convictions are never final and are invalid convictions that must be set aside as void.

The decision is wrong: *Mc Girt's* rule is a substantive rule with constructional force not a procedure rule.[1] It thus applies

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[1]Mc Girt is not a new rule of criminal procedure in Oklahoma in *Ex parte Webb*, 32 U.S. 769, 1912, this held that the City of Vinita, County of Craig is within the boundaries of the Cherokee Nation Reservation, and that Indians or non-Indians who commits crimes within the Cherokee Nation Reservation shall be prosecuted by the federal government not the State of Oklahoma. Mc Girt is following this Court's opinion in Webb's case on Indian country status in Oklahoma in 1912. New Rule of Criminal Procedure? No, don't think so, old rule of criminal procedure in Oklahoma, just not followed by Oklahoma.

retroactively on collateral review as a matter of federal law. Mc Girt "place[s] certain criminal laws and punishments altogether beyond the State's power to impose, "*Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016), and "alters...the class of persons that the law punishes," "Schriro, 542 U.S. at 353. Because *Mc Girt* announced a substantive rule enforced by the Supremacy Clause, federal law requires its retroactive application in state-court proceedings. *Montgomery*, 577 U.S. at 205.

The Oklahoma court's ruling also has sweeping implication. It upends the Constitution's structural allocation of authority that Congress has reserved to the United States. And the State's refusal to grant relief from its ultra virus convictions violates fundamental due process principles that have long been vindicated on habeas corpus; *viz.* that only a court of competent jurisdiction may impose a valid criminal conviction or sentence.

If allowed to stand, the Oklahoma court's decision will leave thousands of individuals with state convictions that the state knows it had no authority to impose in the first place. This Court should grant this petition to reaffirm *Webb's* and *McGirt's* jurisdictional holding, protect Congress's authority under the Supremacy Clause, and vindicate the liberty interests of individuals to be free from punishment that the states have "*no*" power to impose.

ARGUMENT MADE ON STATE WRIT OF HABEAS CORPUS

Under Title 12 O.S. § 1342 The Only Question For This Court Is Whether The Craig County Court Was Of Competent Jurisdiction To Impose Judgment, If Not Is Judgment Void And Can Be Vacated.

Petitioner has a constitutional right under Oklahoma's law and Constitution to challenge on habeas corpus to the lack of jurisdiction of the Craig County judgment even if the judgment is final does to direct appeal being final. Petitioner requested that the district court of *Pittsburg County* reopen his case under 12 O.S. § 1342[2] and relieve him from the Craig county judgment being that

[2] Federal Rules of Civil Procedure 60(b) provides an 'exception to finality' that 'allows a party to seek relief from a final judgment, and request reopen of his case, under a limited set circumstances.'" *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269-70, 130 S. Ct. 1367, 176 L.Ed.2d 158 (2020) (*citation omitted*) (*quoting Gonzalez v. Crosby*, 545 U.S. 524, 528-29, 125 S.Ct. 2641, 162 L. Ed.2d 480 (2005). Petitioner's writ under that rule seeks relief from the final judgment in his 2007 case under both Rule 60(b) (4) and Rule 60 (b) (6). Rule 60 (b) (4) states that the court must relieve a party from a judgment if "the judgment is void.' FED. R. CIV. P. 60 (b) (4). Rule 60 (b) (6) provides courts with authority to relieve parties from a judgment for any "reason that

the judgment is void. Title 12 O.S. § 1342 provides courts with authority to relieve parties from a judgment for any "reason that justifies relief. Petitioner presented evidence to the district court of *Pittsburg County* that justifies relief on a void judgment on lack of jurisdiction to prosecute and sentence Petitioner, an Indian, whose crimes occurred within the Cherokee Nation Reservation a part of Indian Country of the United States.

Process issued on final judgment. Where the court or officer was without jurisdiction or power to render judgment or issue process for the imprisonment of a part, the imprisonment was illegal, and the courts will relieve by habeas corpus. *In re Patwald*, 5 Okla. 789, 50 P. 139 (1897); *Ex parte Harlan*, 1 Okla. 48, 27 P. 920 *1891).

It is a material fact that under the provisions of 18 U.S.C.A. §§ 1151, 1153, 1154, 1161, 1162 the process issued on the Craig County final judgment of the district court not a court of competent jurisdiction to prosecute and sentenced Petitioner, who committed his crimes in Indian country, Petitioner being a member of a Federally recognized Tribe, Shawnee Tribe of Oklahoma. Petitioner is being detained by virtue of a process issued on what is called a final judgment of a "court of no competent jurisdiction, the district court of Craig County clearly pointed out in *Williams' and Romannose's cases* that the court had no jurisdiction to prosecute *Williams and Romannose* because both were Indians and their crimes occurred within the Cherokee Nation Reservation in 2002 through 2018. But, the State argues that it had jurisdiction in Petitioner's case in 2007 to render the particular judgment in Petitioner's case, if the court lacked competent jurisdiction to prosecute *Williams* and *Romannose* for crimes occurring in 2002 through 2018, wouldn't this be so for Petitioner as well. *See Former Preacher Charged for the Sexual Abuse of Five Minors*

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justifies relief." How long must I go down this Trial of Tears for freedom from the void judgment of the district court of Craig county when Williams and Romannose, as well as the district court of Craig county and the Department of Justice made it very clear that in 20o2 through 2018, before the *McGirt* case the Cherokee Nation Reservation was still intact and that the federal government had exclusive jurisdiction to prosecute Indians committing in Indian country. The State has yet presents any evidence or law that it had jurisdiction to prosecute me for a crime that occurred on the Cherokee Nation Reservation in 2007, the State claims it is okay to hold me in prison under a void judgment of Craig County. Being that Craig County lacked jurisdiction to prosecute and sentence me, then that would mean that this Court lacked jurisdiction over any appeal, in that the Craig County was void and reality does not exist. I am serving a life sentence, 40 year and 30 years sentence, in violation of the Treaty with the Cherokee Nation and the United States.

2021 WL 5357247 (D.O.J.) and Stilwell Man Charged with Sexual Abuse of a Child in Indian Country 2021 WL 2888107 (D.O.J.).

Oklahoma Has No Criminal Jurisdiction over Crimes Committed By or Against Indian in Indian Country

This Court recognized more than thirty years ago that Oklahoma failed to assume criminal and civil jurisdiction under Public Law 280 before it was amended to require tribal consent, 25 U.S.C. § 1321, and that Oklahoma "does not have jurisdiction over crimes committed by or against an Indian in Indian Country." See *Cravatt v. State*, 1992 OK CR 6, ¶ 16, 825 P.2d 277, 279 (citing *State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403).

The parameters of criminal jurisdiction in Indian country are clearly defined by federal law. First, under the Major Crimes Act (MAC), federal courts have exclusive jurisdiction, as to Oklahoma, over prosecutions for certain enumerated crimes committed by Indians against Indians or non-Indians in Indian country. *United States v. Ramsey*, 271 U.S. 467 (1926). Second, Oklahoma lacks jurisdiction over prosecutions of crimes defined by federal law committed by or against Indians in Indian country within Oklahoma under the General Crimes Act (GCA) (also known as the "Indian Country Crimes Act" (ICCA)); such crimes are subject to federal or tribal jurisdiction. *U.S. v. Ramsey* at 469. The GCA expressly protects tribal courts' jurisdiction over prosecutions of 'a broader range of crimes by or against Indians in Indian country." *Id* at 469. See *United States v. Prentiss*, 273 F.3d 1277, 1278 (10th Cir. 2001) (noting that GCA "establishes federal jurisdiction over 'interracial' crimes, those in which the defendant is an Indian and the victim is a non-Indian, or vice-versa"). Third, Oklahoma has jurisdiction over all offenses committed by non-Indians against non-Indians in Indian country, but it extends no further. *United States v. McBratney*, 104 U.S. 621, 624 *1882). See also Indian Country Criminal Jurisdiction Chart: justice, gov/usao-/page/file/1300046/download. *Ramsey* laid to rest Oklahoma's position that the MCA and the GCA do not apply in Oklahoma in 1926. Oklahoma's claim to a special exemption from the MCA for the eastern half of Oklahoma where Cherokee lands can be found was said to be "one more error in historical practice. *U.S. v. Ramsey* at 469.

Because Petitioner is Indian and the crimes occurred within the boundaries of the intact Cherokee Nation reservation, Oklahoma has no jurisdiction over Petitioner and his conviction is void.

The Privilege of the Writ of Habeas Corpus

The United States Supreme Court acknowledged that its holding might affect "perhaps as much as half [Oklahoma's] land and roughly 1.8 million of its residents." But it declined to allow fears about the fallout, including the possibility of that '" [t]housands' of Native Americans" might challenge the jurisdictional basis of their state-court convictions," to stand in the way of the Court's holding. Id. The Court raised the possibility that "well-known state and federal limitations on postconviction review in criminal proceedings" might impose "significant procedural obstacles" to relief. Noting state rule that claims not raised on direct appeal are waived on collateral attack. Roberts, C.J., dissenting held that "[U]nder Oklahoma law, it appears that there may be little bar to state habeas relief because issues of subject matter jurisdiction are never waived and can therefore be raised on collateral appeal.'" (quoting *Murphy v. Royal*, 875 F.3d 896, 907 n.5 (10th Cir. 2017), aff'd sub nom. *Sharp v. Murphy*, 140 S. Ct. 2412 (2020). But the Court did not embrace any such defenses, instead concluding that "the magnitude of a legal wrong is no reason to perpetuate it." "[D]ire warnings are just that, and not a license for us to disregard the law."

Challenges to criminal jurisdiction are governed by the Habeas Corpus Procedure Act, 12 O.S. § 1331 and the Oklahoma Constitution Article 2 § 20. The privilege of the writ of habeas corpus shall never be suspended by the authorities of this state. See also *Application of Fowler*, 356 P.2d 770, 1960 OK CR 89. Also see *Waldmann v. Waldmann*, 567 P.2d 532 Civ. App., Div. 1, 1977) where the Civil Courts of Appeal held that:"Even in criminal matters, writ of habeas corpus is proper when challenge is to jurisdiction." Under that every person is entitled to a fair and impartial trial, Criminal Court of Appeals will give relief by habeas corpus if the facts are such that render the judgment and sentence void. *Ex parte Cannis*, 173 P.2d 166 (Crim. App, 1949). Writ of habeas corpus is limited to cases in which the judgment and sentence of the court attacked is clearly void. *Ex parte Hummingbird*, 143 P.2d 166 (Crim. App. 1943). Only a lack of jurisdiction or errors or irregularities which divest the court or jurisdiction or render the judgment void can be raised on petition for habeas corpus. *Ex parte Walker*, 180 P.2d 670 (Crim. App. 1947). Habeas corpus provides a remedy for jurisdictional and constitutional errors at trial without limit of time. *U.S. v. Smith*, 311 U.S. 469 (1947).

In Petitioner's cases it appears that the judgments and sentences was rendered by a court not having jurisdiction over the

person and subject matter, and without authority to render the particular judgment and sentence, that Petitioner shall be released upon habeas corpus, the judgment and sentence is void. The cases listed herein supports Petitioner's claim of entitlement to habeas corpus relief. See Ex *parte Cobler*, 80 Okl. Cr. 25, 156 P.2d 383; *Ex parte Wallace*, 81 Okl. Cr., 176 P.2d 201; *Ex parte Wilson*, 81 Okl. Cr. 233, 162 P.2d 786; *Ex parte Walker*, Okl. Cr., 180 P.2d 670. Where petitioner a prisoner in custody under sentence of conviction seeks discharge on habeas corpus, inquiry is limited to questions whether court in which petitioner a prisoner was convicted had jurisdiction of person of Petitioner and of crime charged, and whether court had jurisdiction to render the particular judgments against petitioner. *Ex parte Motley*, 193 P.2d 613 (Okl. Crim. 1948). Petitioner imprisoned under void judgment for lack of jurisdiction of court may be discharged on habeas corpus. See *Ex parte King*, 272 P. 389 (Okl. Crim. 1928). The law is that, if the court which rendered the judgment had no jurisdiction to render it either because the proceedings under which they were taken were unconstitutional or for any other reason, the judgment is void, and may be attacked collaterally, and the Petitioner may be discharged on habeas corpus. See *Ex parte Nielsen*, 311 U.S. 176, 182, 95 S. Ct. 672, 33 L. Ed. 118; *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717; *Mackey et al., v. Miller* (C.C.A.) 126 F. 161. Where it appears that lower court is without jurisdiction to try accused on indictment as filed or amended and this conclusion would also be reached on appeal, it would work an unnecessary and unreasonable hardship to require accused to appeal and give bond or submit to confinement, and hence prohibition will be granted. See *Bennett v. District Court of Tulsa County*, 162 P.2d 561 (Okla. Crim. 1945). Petitioner's Craig County judgment of convictions and sentences were rendered without jurisdiction of the Craig County District Court and every act of the Craig County District Court beyond its jurisdiction was void. *See Ex parte Reed*, 100 U.S. 13 (1879). Petitioner is entitled to habeas corpus relief and has met his burned of proof that he is a Indian, based on the fact of his Indian blood and recognition by the Shawnee Tribe and the Federal Government as a citizen member of the Shawnee Tribe of Oklahoma. In *Geyger v. Stoy*, 1 U.S. 135 (1785) the United States Supreme Court held: "Where the court has no jurisdiction of either the person of the defendant or of subject matter involved, the prisoner may be discharged by habeas corpus. Even in criminal matters, writ of habeas corpus is proper when challenge is to jurisdiction.

This Case Provides an Excellent Vehicle to Address the State of Oklahoma Writ of Habeas Corpus Procedure Act

This case affords a perfect vehicle for resolving the questions presented. The issue of Oklahoma's State Writ of Habeas Corpus Act was preserved throughout the trial court and appellate proceedings, was not thoroughly considered by the court below, and its outcome-determinative here.

In the proceeding below, petitioner preserved his claim that of Oklahoma's State Writ of Habeas Corpus Act was for issues on the trial court's lack of personal and subject matter jurisdiction to prosecute an Indian in Indian country and can he present his issue on a final judgment by way of petition for writ of habeas corpus in state court on lack of jurisdiction. As Petitioner explained, federal law controls whether Petitioner may be prosecuted in state court. Petitioner contended that a conviction rendered by a court that lacks jurisdiction must be set aside at any time, even in writ of habeas corpus proceedings.

On July 9, 2020, the United States Supreme Court *affirmed* the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), *aff'd, Sharp v. Murphy*, --- *U.S.* ---, 140 S.Ct. 2412, 207 L.Ed.2d 1043 (2020); *Tooisgah v. United States*, 186 F.2d 93, 97 (10th Cir. 1950); *Ex parte Wallace*, 1945 OK CR 92, 162 P.2d 205; *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 229 (1903), making *Murphy* no longer premature to Petitioner's case at the time Petitioner filed his application for post-conviction relief on September 18, 2020, two months after the Court's ruling in *Murphy*. The State court applied *McGirt* to Petitioner's post-conviction relief application instead of *Murphy*, so that the State court would be able to deny Petitioner and other Indians post-conviction relief. Oklahoma equally clearly took the opposite position, because a clear violation of Petitioner's and other Indians of their Constitutional rights to be prosecuted by federal government instead of the state. An entire section of the State's response argued that *McGirt* is not retroactive in its application to Petitioner's case. Petitioner stayed steady on his claim that the city of Vinita, in the county of Craig, in the Cherokee Nation reservation, Oklahoma, is within Indian country of the United States of America and has been so since 1866, the State has never denied or disputed this material fact.

Petitioner Has No Other Adequate Available Alternative Remedy to Seek Review In Oklahoma State Courts.

Your Petitioner has no other adequate available alternative remedies to seek review of his convictions, and therefore this

Court has supervisory jurisdiction to consider Petitioner's request for extraordinary writ seeking review of his state court criminal convictions, whereas Petitioner's release from confinement was barred by the Craig County District Court and Oklahoma Court of Criminal Appeals from seeking post-conviction relief, because his judgment was final, based on judgment and sentence being affirmed on direct appeal, prior to the *Mc Girt v, Oklahoma*, 140 S.Ct. 2452 (2020) ruling in 2021, practically even though *Webb* pre-existed prior to the *McGirt* case, the State has never possessed subject-matter jurisdiction in the city of Vinita, or in Craig county, in the Cherokee Nation reservation, which is deftly Indian country.[3]

The classification of eastern Oklahoma as Indian country has raised urgent questions about which government or governments have jurisdiction to prosecute crimes committed there. This case is an example: A crime committed in what is now [again] recognized as Indian country the Cherokee Nation Reservation [in the City of Vinita, Craig County, Oklahoma] by an Indian against an Indian or a non-Indian in Indian country.

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[3] The petitioner has been presenting his Indian and Indian country claim to the State of Oklahoma since 2007. The Craig County District Court has refused to entertain that petitioner is a member of the Shawnee Tribe and that the city of Vinita is within the boundary of the Cherokee Nation Reservation, The District Court had clear knowledge that the Vinita Police Department and the Craig County Sheriff's Office, both were crossed-deputized with the Cherokee Marshal Service of the Cherokee Nation Reservation in 2007 when petitioner was arrested for committing crimes in Craig County. Even though the Court was aware of the fact that the city of Vinita was within the boundary of the Cherokee Nation Reservation and that petitioner is member of the Shawnee Tribe, the State still prosecuted petitioner knowing that the State lacked jurisdiction to do so. And now, Oklahoma refuses to correct its grave error of malicious prosecution and false imprisonment. Petitioner is serving a life sentence, a 30 years sentence and 40 years sentence all for non-violent crimes. Oklahoma has been knowingly illegally prosecuted Indians for years and once it was brought to Oklahoma's attention that what Oklahoma was doing is wrong, Oklahoma cuts off every criminal procedure to correct all illegal convictions of Indians Oklahoma has convicted for crimes committed on Indian Reservations. Still to this day and time Indians are still being treated like savages and being pushed out of lands the U.S. Government promised that the lands would always be Indian lands. What about the promise the United States made to protect the Indians from the acts of the States illegally prosecuting Indians for crimes committed in Indian country. Since 1912 this Court made it very clear in *Webb* that the city of Vinita, county of Craig, Oklahoma and the Cherokee Nation reservation is Indian county and that only the federal government has exclusive jurisdiction to prosecute Indians who commits crimes against Indians and non-Indians in Indian country. How long do petitioner and all other Indians in Oklahoma prison system have to be subjected to such unlawful restraint and lost of liberty, even though Oklahoma admits that it has illegally prosecuted and illegally imprisoned Indians for years? When will this trail of tears come to a stop for all state incarcerated Indians, when?

The question is whether the City of Vinita, County of Craig, Oklahoma is Indian country and is within the boundary lines of the Cherokee Nation Reservation. So, at the time of Petitioner's case in 2007 in the City of Vinita, Craig County, Cherokee Nation Reservation, Oklahoma, was clearly Indian country, meaning that the State lacked jurisdiction to prosecute petitioner's case, this being true, Petitioner's judgments and sentences from Craig County is *void ab initio* and this Court can grant Petitioner habeas corpus relief.

Adequacy of a remedy in this context is determined by whether the law provides a means for complete relief for a person with the type of claims Petitioner is raising, i.e., a reasonable opportunity to obtain the relief he seeks. Under the Petitioner's circumstances he is not provided with a clear and certain opportunity for obtaining complete relief at law under the Post-Conviction Procedure Act. See *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686. Petitioner could not raise this claim on application for post-conviction relief because the claim was not available nor on direct appeal because the claim was not available for direct appeals at that time, because the Indian country claim had yet to be decided by the Courts. Based on *Mc Girt's* reasoning, the Oklahoma Court of Criminal Appeals later recognized that several other Indian reservations in Oklahoma had likewise never been properly disestablished. *See, e.g., State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ¶ 15, 497 P.3d 686, 689 (reaffirming recognition of the Cherokee, Choctaw, and Chickasaw Reservations); *Grayson v. State*, 2021 OK CR 8, ¶10, 485 P.3d 250, 254 (Seminole Reservation). In light of *Mc Girt* and the *Hogner* case, the eastern part of Oklahoma, including Vinita, *once again*, is now recognized as Indian country. Again, this claim was not available at the time petitioner's judgments and sentences became final, because the State refused to accept that Petitioner is an Indian defendant and that his crimes occurred in Indian country.

Habeas Corpus Procedure Act is the only available statutory or common law proceeding to vindicate Petitioner's claim, since post-conviction is not available to petitioner to vindicate Petitioner's claim. See *Ex parte Sullivan*, 10 Okl. Cr. 465, 138 P. 815. Also in *Ex parte Barnett*, 67 Okl. Cr. 300, 94 P.2d 18, 19, it was held: 'It must never be foregotten that the writ of habeas corpus is a precious safe-guard of personal liberty, and that there is no higher duty than to maintain it unimpaired.'

Because the State of Oklahoma lacked jurisdiction, Petitioner's convictions in the District Court of Craig County are void ab initio and should be vacated and charges dismissed and

Petitioner be ordered released from the Warden of OSP custody immediately. This is based solely on the opinion in *Hogner's* and *Webb's* case that Petitioner's judgments and sentences is clearly void ab initio, entitling him relief on writ of habeas corpus.

Unlawful Custody

Challenges to unlawful custody or restraint must be initiated pursuant to constitutional right to writ of habeas corpus in county where prisoner is being held in accordance with procedure set forth in habeas corpus statute. [12 Okl. Stat. Ann. § 1331 et seq.] *Mahler v. State,* Okla. Crim. App., 783 P.2d 973 (1989). Also see *Waldmann v. Waldmann*, 567 P.2d 532 Civ. App., Div. 1, 1977) where the Civil Courts of Appeal held that "even in criminal matters, writ of habeas corpus is proper when challenge is to jurisdiction."

Here, the State can only correct its unlawful prosecution of Petitioner by releasing him from state custody because Petitioner is incarcerated pursuant to judgments and sentences that were obtained without jurisdiction. Respondent cited no legal authority that would permit the State to continue holding Petitioner in state custody when Petitioner's judgments and sentences are invalid and Petitioner is not subject to retrial in state court on the underlying charges.

Federal Regulation of Indian Country Crimes.

For nearly two centuries the Supreme Court has recognized that "[t}he whole intercourse between the United States and [Indian Tribes] is, by our Constitutional and laws, vested in the Government of the United States. "*Worcester v. Georgia*, 31 U.S. 515, *Juan Quinones* # 842107 (1882). In the earliest years of our nation, Congress withheld the exercise of its exclusive power to prosecute at least some crimes involving Indians on tribal lands. For example, under a 1796 law, Congress provided that "offenses committed by Indians...against each other were left to be dealt with by each tribe for itself according to its local customs. "*Ex parte Crow Dog,*' 109 U.S. 556, 571-72 (1883)." *Crow Dog* set aside a federal conviction of an Indian in a territorial court, based on its conclusion that, despite an agreement with the Sioux tribe to allow federal prosecution for murder, the treaty had not repealed

Congress's exemption of crimes by Indians against each other. Accordingly, the Court held the federal territorial court "was without jurisdiction to find or try the indictment against the prisoner, "such that "the conviction and sentence are void, and that his imprisonment is illegal *Id.* at 572.

In part in reaction to *Crow Dog*, see *United States v. Kagama*, 118 U.S. 375, 382-83 (1886), Congress enacted the *MAC*. See Act of Mar. 3, 1885, ch. 341, 23 Stat. 362, codified at 18 U.S.C. § 1153(a); *United States v. John*, 437 U.S. 634, 651 (1987).[4] Accordingly, absent an Act of Congress providing otherwise, State lack jurisdiction to prosecute "offenses covered by *Indian Major Crimes Act*." *Negonsott v. Samuels*, 507 U.S. 99, 102-03 (1993); see Mc *Clanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 168 (1973) (similar).

Reasons for Granting the Petition

Webb and Ramsey gave effect to a fundamental structural principle governing criminal jurisdiction over Indian-country crimes: States have no authority to prosecute crimes covered by the Major Crimes Act or the Indian Country Crimes Act. The decision below flouts that principle. By holding that *McGirt* is not retroactive to cases on collateral review, the Oklahoma court has refuse to allow petitioners to enjoy the right to challenge a district court's lack of jurisdiction to impose a sentence, Title 12 O.S. § 1331which gives a petitioner the right to make such a challenge after direct appeal to the Oklahoma Court of Criminal without a time limitation or any procedural bars. The Oklahoma Court of Criminal Appeals has made it clear that the lack jurisdiction can never be waived, but yet the Oklahoma Court of Criminal Appeals "now holds that the lack of jurisdiction can be waived on postconviction application." How can this be so, when this Court has made it clear that lack of jurisdiction of a court can never be waived? Are the courts in Oklahoma saying they have no respect for Native Americans; and, that Oklahoma is stuck in 1700s and 1800s when it really had no respect for the Native Americans in Oklahoma. Petitioner and other Native Americans have no rights to have their convictions voided like Murphy. Why? Every court in Oklahoma is doing all that they can to denied Native Americans equal protections of the laws under United States Constitution. And this Court is just standing by and allowing it to be so, when the federal government promised to protect Indians. How can this Court or any other court of the United States of America claim that

[4]The MCA originally used the term "reservation" but in 1948 Congress replaced the term "reservation" with the broader tem "Indian country" which was "used in most of the other special statutes referring to Indians[.] See John, 437 U.S. at 634, 647 n.16, 649 (citing 18 U.S.C. § 1153).

they are there to protect Native Americans, wards of the United States of America, when there is no protection for Native Americans, at state level or federal level. Many of us Native Americans are stuck in a position, as if we were in 1700s and 1800s, when Indian families were being wiped out by the white man, which is what is happening with the courts in America today. They say history always repeat itself, must be true. In these present times all over the United States of America, Indians have no rights in state courts. Petitioner knows of no other way to present this argument in behalf of his self and other Indians to this Court. Beyond the Oklahoma court's legal errors, its decision has enormous practical importance. Which this Court has left unreviewed, the decision has condemned "many Indian American defendants to bear state convictions and serve state sentences for crimes the State of Oklahoma had no power to prosecute in the first place. The State has no authority to preserve convictions that are inherently void, but yet the United States of America is allowing the Oklahoma state courts to continue to do so; and of the legal and practical importance of the issue in this case, this Court's review of the below is warranted again to determine whether or not Petitioner and other Indians have a constitutional right to state habeas corpus.

This Case Provides an Excellent Vehicle to Address the State of Oklahoma Writ of Habeas Corpus Procedure Act

This case affords a perfect vehicle for resolving the questions presented. The issue of Oklahoma's State Writ of Habeas Corpus Act was preserved throughout the trial court and appellate proceedings, was not thoroughly considered by the court below, and its outcome-determinative here.

In the proceeding below, petitioner preserved his claim that of Oklahoma's State Writ of Habeas Corpus Act was for issues on the trial court's lack of personal and subject matter jurisdiction to prosecute him an Indian in Indian country and can he present his issue on a final judgment by way of petition for writ of habeas corpus in state court on lack of jurisdiction as required by Title 12 O.S. § 1331. As petitioner explained, federal law controls whether petitioner may be prosecuted in state court. Petitioner contended that a conviction rendered by a court that lacks jurisdiction must be set aside at any time, even in writ of habeas corpus proceedings.

Nothing in Oklahoma's State Writ of Habeas Corpus Act prevents Petitioner and other Indians from presenting a lack of jurisdiction claim to the state courts to set aside the void judgment and sentence, each Indian is imprisoned under. In fact the cases cited fewer than 12 O.S. 1331[5] herein by Petitioner allows petitioner and other Indians to make such challenges by way of writ habeas corpus. Right?

On July 9, 2020, this Court *affirmed* the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), *aff'd, Sharp v. Murphy*, --- *U.S.* ---, 140 S.Ct. 2412, 207 L.Ed.2d 1043 (2020); *Tooisgah v. United States*, 186 F.2d 93, 97 (10th Cir. 1950); *Ex parte Wallace*, 1945 OK CR 92, 162 P.2d 205; *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 229 (1903), making *Murphy* no longer premature to Petitioner's case at the time file petitioner filed his application for post-conviction relief on September 18, 2020, two months after this Court's ruling in *Murphy*. The State court applied *Mc Girt* to petitioner's post-conviction relief application instead of *Murphy*, so that the State court would be able to deny Petitioner and others post-conviction relief. Oklahoma equally clearly took the opposite position. An entire section of its response argued that *Mc Girt v. Oklahoma* is not retroactive in its application to Petitioner's case. Petitioner never once raised *Mc Girt v. Oklahoma* as claim for relief.

The Oklahoma Court of Criminal Appeals directly passed on the prematurity of *Murphy*. In the lower court's view, *Murphy* was premature and did not apply to petitioner case. Petitioner filed back into the District Court as instructed to do so by the State once the mandate was lifted and the Tenth Circuit's opinion became final law in Oklahoma, by way of this Court affirming *Murphy*. Its decision necessarily rejected petitioner's federal-law claim-that Murphy of its own force must be applied in state collateral-review proceedings.

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[5] Title 12 O.S. § 1331 give petitioner ample standing to attack the conviction. Is a judgment void if a court acts without jurisdiction. A final judgment is void for purposes of rule governing relief from judgment only is the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law. *Craigslist, Inc. v. Hubert*, 278 F.R.D. 510 (2021). U.S.C.A. Const. Amend. 5.

Accordingly, the questions presented was both "pressed" and "passed upon," *United States v. Williams*, 504 U.S. 36, 41 (1992) (noting that either is sufficient to warrant certiorari), and is squarely presented for this Court's review. The questions presented also determine the outcome of petitioner's request for post-conviction relief. The Oklahoma Court of Criminal Appeals relied on retroactivity as a bar to applying *Mc Girt* to petitioner's convictions, not on way waiver principle applying *Murphy*. And the State cannot now invoke a waiver rationale to shield its decision, because no such principle would be "consistently or regularly applied." Johnson v. Mississippi, 486 U.S. 578, 588-589 (1988) see *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), *aff'd, Sharp v. Murphy*, --- *U.S.* ---, 140 S.Ct. 2412, 207 L.Ed.2d 1043 (2020)(holding that Oklahoma's longstanding practice of asserting jurisdiction over Native Americans for crimes covered by the MCA was unlawful.) also see *Mc Girt*, 140 S. Ct. at 1501 n. 9 (Roberts, C.J., dissenting)(noting that under Oklahoma law, jurisdictional objections are "never waived and can therefore be raised on a collateral appeal") (internal quotation mark omitted). Although the Oklahoma court asserted that state-law retroactive rules barred relief for petitioner, that is not an adequate and independent barrier to this Court's review, for at least one reason.

This Court affirmed the Tenth Circuit's decision in *Murphy* which means that the Petitioner "must file an application for post-conviction relief back to the district court that prosecuted him and request post-conviction relief." Petitioner filed back into the district court as instructed to do so by the State once the mandate was lifted and the Tenth Circuit's opinion became final law in Oklahoma. This Court *affirmed* the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), *aff'd, Sharp v. Murphy*, --- *U.S.* ---, 140 S.Ct. 2412, 207 L.Ed.2d 1043 (2020); *Tooisgah v. United States*, 186 F.2d 93, 97 (10th Cir. 1950); *Ex parte Wallace*, 1945 OK CR 92, 162 P.2d 205; *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 229 (1903), making *Murphy* no longer premature to petitioner's case.

Habeas Corpus in Pittsburg County Case No. CV-2022-139

The Court suggests that "well-known" "procedural obstacles" could prevent challenges to state convictions. *Ante*, at 38. But, under Oklahoma law, it appears that there may be little bar to state habeas relief because "issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal." *Murphy v. Royal*, 875 F.3d 896, 907, *n. 5* (CA 10 2017) (*quoting Wallace v. State*, 955 P.2d 566, 372 (Okla. Crim. App. 1997).

Availability of State Writ of Habeas Corpus in Oklahoma is not suspended, the district court of Pittsburg County suspended Petitioner's right by denying him habeas corpus relief. Unlike a post-conviction remedy, the writ of habeas corpus was historically restricted to a collateral attack on the *"final judgment"* where it appeared that the convicting court lacked jurisdiction of the person or subject matter. See *SCOTT & ROE*, Habeas Corpus 24-31 (1923); 36 *CALIF. L. Rev.* 420, 421-25 (1948); 20 *SD. CAL. L. Rev.* 304, 305 (1947).

The rule that a lower court must follow decision of a higher court at an earlier stage of the case applies to everything decided either expressly or by necessary implication. *Cherokee Nation v. State of Oklahoma*, 461 F.2d 674 (10th Cir. 1972).

This Court has said that "when Congress has once established a [Indian] reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." *Seymour v. Superintendent*, 368 U.S. 351, 359, 82 S.Ct. 424, 429, 7 L. Ed.2d 346. There has been no separation here; the tribal governments still exists; and Oklahoma was admitted to the Union in 1907 upon compliance with the Enabling Act of June 16, 1906, 34 Stat. 267, which require a disclaimer of title to all lands owed "by any Indian or Indian tribes." *Idib.* at 279. We adhere to the conclusion, which was implicit in our first decision, that the Indians have not divested themselves of the in question. The claims of Oklahoma and its lessees must be rejected. *N0. 6.*

The trial court without jurisdiction of prosecution under unconstitutional law, and judgment on conviction therein is utterly void and may be collaterally attacked. Generally, judgment on conviction of crime under unconstitutional law may be impeached in habeas corpus proceedings to establish right of convicted person to his liberty. A judgment of conviction is not subject to collateral attack where the District Court had jurisdiction of the person and subject matter. Courts have power to declare the law only and may not make or amend it. *U.S. v. Consolidated Elevators Co.*, 141

F.2d 791 (8th Cir. 1944). The power of Congress to limit the jurisdiction of inferior courts refers to the character of cases and does not include power to limit the law to be applied in cases which the court has jurisdiction to hear. *Payne v. Griffin*, 51 Fed. Supp. 588 (1943). The scopes of Indian committing crimes in Indian country under a treaty are a question of federal law. Oklahoma is engaged in a conduct which misled and prejudices the Indians of Eastern Oklahoma by imprisoning them in state prisons for crimes occurring in Indian country. Under § 27 of the 1906 Act, 34 Stat. 137, 148, the United States holds the land in trust for the Indians. In view of the obligation of the United States to protect the interests of the dependent Indian people, ambiguities in applicable treaties, agreements, or statutes are construed in favor of the Indian people. Oklahoma, has not seen it this way when it comes to prosecuting Indians for crimes committed on Indian reservations, Congress has not expressly authorized the State of Oklahoma action to do so, as it doing so today. The federal government generally has jurisdiction over Indians for any assault committed by them on Indian Reservation, *U.S. v. La Plant*, 156 F. Supp. 660 (1957).

Two early decision that have been cited several times by Petitioner as the authority for the principle that the Cherokee Nation Reservation is Indian country is subject to criminal jurisdiction exclusively to the federal government to prosecute Indians where Congress has authorized the prosecution of Indians committing crimes in Indian country are *Webb* and *Ramsey*. *McGirt* stripped these two early decisions of their authoritative value in this regard. The majority opinion in *McGirt* described *Webb* and *Ramsey* as authority for the doctrine of exclusive jurisdiction of Indian country, while the dissenting opinion discredited *McGirt* as authority for the doctrine. See *Bittle v. Bahe*, 192 P.3d 810 (2008).

Evidence was sufficient to establish that defendant, who lived on Indian reservation but classification as Indian descendant of a tribal affiliation. *U.S. v. La Buff*, 658 F.3d 873 (2011). *United States v. Clous*, 2022 WL 585677 The Government has a certification of – tribal enrollment, which is "the common evidentiary means of establishing Indian status." Id. at 5; *United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir, 1979). "[C]lear and undisputed" that a defendant both has Indian blood and is an enrolled member of a federally recognized tribe is sufficient for to prove a defendant's Indian status. *United States v. Zepeda*, 792 F.3d 1103, 1115 (9th Cir. 1015). 'Enrollment in a Tribe. The Court must first consider whether defendant is enrolled in any "federally recognized tribe." *Zepeda*, 792 F.3d at 1114. Here, the inquiry is a

simply one. It is undisputed that defendant is enrolled in the Shawnee Tribe.

Petitioner contends that the result he seeks does not involve the creation of a new rule. Relying upon the Supreme Court decisions in *Ex parte Webb*, 32 U.S. 769, (1912), *Apapas v. U.S.*, 233 U.S. 587 (1914) and *U.S. v. Ramsey*, 271 U.S. 467, 46 S.Ct. 559 (1926) all three was decided before Petitioner conviction became final in 2010. The Supreme Court decided that Congress had not disestablished the Cherokee nation Reservation in 1906 when Oklahoma became a state, "Indian country' as used in the Ten Major Crimes Act, includes the Cherokee Nation Reservation in Oklahoma, 18 U.S.C.A. §1153 way before *McGirt* was decided. That exclusive jurisdiction had been conferred on the federal courts by laws of Congress since 1885. The statutory provisions are currently contained in 18 U.S.C.A. § 1153. It is therein provided that an Indian who commits any one of ten enumerated crimes, including assault, within Indian country 'shall be subject to the same laws and penalties as all other persons committing any of the above offenses within the exclusive jurisdiction of the United States.' See *In re Carmen*, D.C.N.D. Cal., 165 F. Supp. 942, 948, *affirmed mem. sub. nom., Dickson v. Carmen*, 9 Cir. 270 F.2d 809. "Indian country' as used in this statute includes the Cherokee Nation Reservation. See 18 U.S.C.A. § 1151. 18 U.S.C.A. §1161 *Application of Indian Liquor Laws* 18 U.S.C.A. § 1154. *Indian Liquor Statute, General Crimes Act, Major Crimes Act*, and statutes dealing with application of liquor laws to Indian country must be read together to reach consistent results. 18 U.S.C.A. §§ 1152-1154, 1161. 18 U.S.C.A. § 1154 Intoxicants dispensed in Indian country. *Evans v. Victor*, E.D. Okla. 1912, 199 F. 504 reversed on other grounds 204 F. 361, 122 C.C.A. 531. The admission of Oklahoma into the Union did not affect the application of former section 241 of Title 25 to that part of the state formerly Indian Territory.

But if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on the courts by Congress has remained exclusive. *Donnelly v. United States*, 228 U.S. 243, 269-272, 33 S. Ct. 449, 458-459, 57 L.Ed. 820; *Williams v. United States*, 327 U.S. 711, 66 S. Ct. 711, 66 S. Ct. 778, 90 L. Ed, 962.

The term "Indian country" as used in Rev. St. § 2145, 25 U.S.C. § 217, extending to that country certain laws of the United States as to the punishment of crimes, includes land lawfully set apart for an Indian reservation out of public domain, and previously occupied by Indians. Offenses committed within Indian Country. Vinita, Oklahoma is located in Craig County, Oklahoma,

the Cherokee Nation Reservation, Oklahoma Indian Country, United States of America, and, therefore, is located on property over federal courts had exclusive jurisdiction for crimes committed by Indians. *Webb*.

Authority of United States of America to punish crimes committed by or against Indians continued after admission of Oklahoma as state, though authority to punish other crimes therein was ended. *Rev. St. § 2145, 25 U.S.C.A. §217*. Reservations. Lands in Oklahoma reserved for Cherokee Nation was not disestablished and has always remained "Indian country' under the federal Major Crimes Act. *Webb* 1912. *Indians [key] 321*. This Court has long required a clear expression of the intention of Congress before the state or federal government may try Indians for conduct on their lands. *Apapas v. U.S.*, 233 U.S. 587 (1914), this Court held that a murder committed by Indian on a reservation within a state is a crime against the United States, punishable by *Penal Code, Act March 4, 1909, c. 321, § 328, 35 Stat. 1151, 18 U.S.C.A. §§ 1151, 1153, 3242*. After a session of jurisdiction by the state and after being memorialized to do so by the legislature of Oklahoma, Congress, in 1906, granted jurisdiction specifically to the courts of the United States for the District of Oklahoma over actions charging any person with certain major crimes committed within any Indian reservation in that State. *2145, Rev. St. (Comp. St. 4148*), which extends the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, to the Indian country, with certain exceptions not material here. *U.S. v. Ramsey* at 469. The authority in respect of crimes committed by or against Indians continued after the admission of the state as it was before [*McGirt v. Oklahoma*] in virtue of long-settled rule that such (Indians are wards of the nation), in respect of whom there is devolved upon federal government 'the duty (of protection and with power' (*United State v. Kagama*, 118 U.S. 375, 384, 6 S. Ct. 1109, 30 L.E.d. 228.). Historical Notes: Section 217, R.S. § 2145 related to general laws as to punishment extended to Indian country, and is now covered by §§1151 and 1152 of Title 18, Crimes and Criminal Procedure. Section 217a, Act of June 8, 1940, c. 276, 54 Stat. 249, related to jurisdiction of Kansas over offenses committed by or against Indians on reservations, and is now covered by § 2343 of Title 18. Section 218, R.S. § 2146; Act Feb. 18, 1875, c. 80, § Stat. 318, related to exceptions as at extent of Indian country.

The Judgment and Sentence Is Void Ab Initio

The Oklahoma Courts need look no further than at its lack of subject matter jurisdiction to vacate the Judgment and Sentence as *void ab inito*. See *Okla. Stat. tit. 22 § 1083*; see *Okla. Art. I, § 3*; see *U.S. Const. Art. I, Sec. 8, Cl. 3* (1789); see *U.S. Const. Art. II, Sec. 2, Cl. 2* (1789); see *U.S. Const. Art. VI, Para. 2* (1789); *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020); see *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017): see *Wallace v. State*, 955 P.2d 366, 372 (Okla. Crim. App. 1997); see *Triplet v. Franklin*, 365 Fed. Appx. 86, 95 (10th Cir. 2010) (unpublished); see *Wackerly v. State.* 237 P.3d 795, 797 (Okla. Crim. App. 2010); see *Magnan v. State*, 207 P.3d 397, 402 (Okla. Crim. App. 2009); see *Armstrong v. State*, 1926 35 Okl. Crim. 116, 248 P. 877, 878; see *Staley v. State*, 1953 Okla. Crim. 114, 259 P. 545. This Court should consider *sua sponte* treatment and dismissal in *Sully v. United States*, 195 F. 113 (8th Cir. 1912) and *John R. Sand & Gravel Co. v. United States*, 552 US. 130 (2008) (In a seven-member (7) majority opinion written by Justice Stephen G. Breyer, the Court upheld *sua sponte* dismissal based upon lack of subject matter jurisdiction.), and *Sully v. United States*, 195 F. 113 (8th Cir. 1912).

The lack of subject matter jurisdiction is really apparent from the facts presented herein and incorporated by this *Motion*. The Court should vacate and dismiss the Judgment & Sentence on the paper alone. See Okla. Stat. tit. 12 § 1083("A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.'0. In Oklahoma, issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal." see *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017): see also *Wallace v. State*, 935 P.2d 366, 372 (Okla. Crim. App. 1997); see *Triplet v. Franklin*, 365 Fed. Appx. 86, 95 (10th Cir. 2010) (unpublished); see *Wackerly v. State.* 237 P.3d 795, 797 (Okla. Crim. App. 2010); see *Magnan v. State*, 207 P.3d 397, 402 (Okla. Crim. App. 2009); see *Armstrong v. State*, 1926 35 Okl. Crim. 116, 248 P. 877, 878; see *Staley v. State*, 1953 Okla. Crim. 114, 259 P. 545.

"Under Oklahoma's Constitution, State has no authority to reduce federal reservation lying within their borders." *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020); See *U.S. Const. Art. I, Sec. 8,*

Cl. 3 (1789); see *U.S. Const. Art. II, Sec. 2, Cl. 2* (1789); see *U.S. Const. Art. VI, Para. 2* (1789). "Now a void Judgment is in reality no judgment at all. It is a mere nullity. It is attended by none of the consequences of a valid adjudication nor is it entitled to the respect accorded to one... It is supported by no presumptions, and may be impeached in any action, direct or collateral." *Condit v. Condit*, 1916 OK 905, 168 P. 456 (1916). "A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby." Okla. Stat. tit. 12 § 1083.

It took less than eight (8) years from statehood for the Supreme Court of Oklahoma to render a decision on invalidating judgment based upon a lack of jurisdiction. "Judgment—Jurisdiction of Person—Invalidity-Impeachment—Direct and Collateral Attack—Void Judgment. A judgment rendered without jurisdiction of the person is no judgment at all; it is mere nullity. It is attended by none of the consequences of a valid adjudication, nor is it entitled to the respect accorded to one. It can neither affect, impair, nor create rights. As to the person against whom it professes to be rendered, it binds him in no degree whatever." *Condit v. Condit*, 1916 OK 905, 168 P. 456 syl. 2 (1916).

In Condit the Supreme Court of Oklahoma cites § 218 of *Black on Judgments*, 2d. Vol. (1891): "It is a familiar anti universal rule that a judgment rendered by a court having no jurisdiction, of either the parties or the subject-matter, is void and a mere nullity, and will be so held and treated whenever and wherever and for whatever purpose it is sought to be used or relied on as a valid judgment. The effect of a want of jurisdiction is clearly stated in an early decision of the United States Supreme Court in the following language: 'Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable bur simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no jurisdiction; and all persons concerned in executing such judgments or sentences are considered in law as trespassers.'" (Emphasis Added).

This Court should consider the sua sponte treatment limiting exercises of jurisdiction in *John R. Sand & Gravel Co. v. United States*, 552 US. 130 (2008). In a seven-member (7) majority opinion written by Justice Stephen G. Breyer, the Court upheld the Federal Circuit ruling that the statute of limitations was "jurisdictional." In *John R. Sand & Gravel Co.* the Federal Circuit ruled that (1) the statute of limitations was jurisdictional, that; (2) jurisdictional requirements determine whether courts can hear a case, and that; (30 they cannot be waived by the parties to the case, and courts can consider jurisdictional issues on the courts' own initiative. In that case, this Supreme Court upheld *sua sponte* vacation and dismissal by the Federal Circuit of the decision of the lower court for lack of subject matter jurisdiction.

"Now a void Judgment is in reality no judgment at all. It is a mere nullity. It is attended by none of the consequences of a valid adjudication nor is it entitled to the respect accorded to one. It can neither affect, impair, nor create rights. As to the person against whom it professes to be rendered, it binds him in no degree what [soever]; ... As to the person in whose favor it professes to be, it places him in no better position than he occupied before; it gives him no new right, but an attempt to enforce it will place him in peril... It is not necessary to take any steps to have it reversed, vacated, or set aside. But whenever it is brought up against the party, he may assail its pretensions and show its worthlessness. It is supported by no presumptions, and may be impeached in any action, direct or collateral." *Condit v. Condit*, 1916 OK 905, 168 P. 456 syl. 2 (1916).

Mootness and Legal Consequences

A void judgment of conviction is not made valid by the fact that the accused was actually guilty, for the law presumes innocence until a valid finding of guilt is made. *U.S. v. Di Martini*, S.D.N.Y. 1953, 11F. Supp. 601. Unconstitutional deprivation of the right to fair hearing [trial] 'stands as a jurisdictional bar to a valid conviction and sentence. Passage of many years does not cure void conviction. *United States v. Morgan*, 22 F.2d 673 (2nd Cir. 1955). There is no limitation of time within which motion for relief from void judgment must be filed. Rules of Civil Procedure, rule 60 (b) (4).

Thus, the theory on which petitioner attacks his state conviction is that the judgment was entered without jurisdiction and was therefore a nullity, a void judgment of conviction is not made valid by the fact that the accused was actually guilty, for the law presumes innocence until a valid finding of guilt is made. Nor is a void judgment validated by the passage of twenty years. See *Allen v. United States*, D.C.N.D. Ill., 102 F. Supp. 866, 869. Petitioner was deprived of his common law right to a fair hearing at trial in the Craig county district court and he in no way waived that right, this would be a proper case for allowing a writ of habeas corpus, since such denial is an error of fundamental character rending the trial invalid, because the state lacked jurisdiction to prosecute petitioner in the first place, for the reasons stated herein.

Title 12 O.S. § 1331 give petitioner ample standing to attack the conviction. Is a judgment void if a court acts without jurisdiction. A final judgment is void for purposes of rule governing relief from judgment only is the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law. *Craigslist, Inc. v. Hubert*, 278 F.R.D. 510 (2021). U.S.C.A. Const. Amend. 5.

In the year 1912, in the division of said district, and within the jurisdiction of said court in Craig County, in the State of Oklahoma, the same then and there being and constituting a portion of the Indian country of the United States. *Ex parte Webb*, 32 S. Ct. 663, 665. The Cherokee Nation Reservation was not disestablished in 1906 by the Oklahoma Enabling Act of June 16, 1906, § 1, 34 Stat. 267. A judgment of conviction pronounced by a state court, which has not complied with the requirements of the Sixth Amendment, is void. The Sixth Amendment of the Constitution of the United States provides in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, by an impartial jury of the state and district wherein the crime shall have been committed, *which district shall have been previously ascertained by law*, and to be informed of the nature and cause of the accusation; to be confronted, with witnesses in his favor, and to have the Assistance of Counsel for his defense.

This Court has ruled the denial of these constitutional guarantees to be error of such fundamental character as to render the proceedings and any pronouncement of conviction void. *Johnson v. Zerbst*, 304 U.S. 458.

Webb establishes that in 1912 the Court recognized the city of Vinita, Craig County, Oklahoma, as Indian country, that the Cherokee Nation Reservation is also recognized as Indian country

a part of the United States of America that the federal government had exclusive jurisdiction over Indian country to prosecute crimes committed by Indians and non-Indians. In *Webb* the federal government prosecuted two white men for committing crimes Indian country, in the city of Vinita, County of Craig, Cherokee Nation Reservation, Indian country, this was decided long ... long before *McGirt* was even thought about or decided. Which was 118 years after this Court decided *Webb*. This Court interpreted that caveat to preserve not just forward-looking power, but "established [federal] laws and regulations" concerning Indians. *Ex parte Webb*, 32 S. Ct. 663, 683 (1912); *Ramsey,* 271 U.S. at 469; see also *Sands*, 968 F.2d at 1062 (deciding the government's "construction of the "*Oklahoma Enabling Act*" as "ignor[ing] § 1"). These cases discuss the equal-footing doctrine of Indian country and federal jurisdiction to prosecute Indians. *State v. Huser*, 76 Okla. 130, 184 P. 113, 1919 OK 218. The judicial power granted by section 1, art. 3, of the Constitution of the United States, is the power to try the ten classes of cases specified in section 2 of that article; The Act of Congress of June 14, 1918 (40 Stat. 606, c. 101, sections 4234a, 4234b, Append. Comp. St. 1918).

McGirt is not a new rule, the *McGirt* holding is not a new rule for purposes of *Teague* restriction on applying or announcing new rules in cases on collateral review, if it breaks new ground, imposes new obligation on state or federal government or was not dictated do to precedent existed at time defendant's conviction became final. *Graham v. Collins*, 113 S. Ct. 892 (1993). *McGirt* is not contrary to the later decision of *Webb*. *McGirt* did not break new ground on Indian Country in Oklahoma or impose new obligation on state or federal government. Oklahoma has always been obligated to the federal government when it comes to prosecuting Indians in Indian country. Indian country in Oklahoma was dictated due to the precedent that existed at the time of Petitioner's conviction become final, on appeal. The trial court of District Court of Craig County was well aware of the fact that Craig County is within the boundary lines of the Cherokee Nation Reservation, in that the Vinita Police Department and the Craig County Sheriff Department were both ***cross-deputized*** with the Cherokee Marshals Office in *2007* when Petitioner's crime occurred in Craig County.

It was unlikely that reasonable jurists in 2007 would have found that Oklahoma's scheme satisfied section 1, art. 3 of the Constitution of the United States, which is the power to try the classes of cases specified in section 2 of that article, Indian country. To satisfy requirements of principle barring retroactive application of new rule on habeas review are: rules placing class of

private conduct beyond power of state to proscribe, or addressing substantive categorical guarantee accorded by the Constitution, such as rule prohibiting a certain category of punishment for class criminal procedures implicating fundamental fairness and accuracy of criminal proceeding. *Graham v. Collins*, 113 S. Ct. 892 (1993).

The first exception permits the retroactive application of a new rule if the rule places a class of private conduct beyond the power of the state to proscribe, see *Teague,* 489 U.S., at 311, 109 S.Ct., at 1075, or address a 'substantive categorical guarantee[d] accorded by the Constitution,' such a rule 'prohibiting a certain category of punishment for a class of defendants because of their status or offense.' *Saffle v. Parks*, supra, 494 U.S., at 494, 110 S. Ct., at 1263 (quoting *Penry*, 492 U.S., at 329, 330, 109 S.Ct. at 2953. Plainly, this exception has application here because the rule Petitioner seeks would decriminalize a class of conduct and prohibit the imposition of punishment on a particular class of persons, "Indians."Petitioner believes that denying him and other Indians habeas corpus relief 'seriously diminish[ed] the likelihood of obtaining an accurate determination' in his state prosecuting proceeding. *Ex parte Webb*, 32 S. Ct. 663, 683 (1912). The second exception permits *** courts on collateral review to announce" 'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Ibid.* Whatever the precise scope of this exception, it is clearly meant to apply only to a small core of rules requiring "observance of 'those procedures that...are "implicit in the concept of ordered liberty." '"*Teague, supra*, 489 U.S., at 311, 109 S. Ct., at 1076." Accordingly, this Court should find the first and second exception to be applicable.

This Court can conclude that from the facts disclosed in the records that the defendant was prosecuted in State court and he is Indian and the crimes occurred in Indian country, and that the State of Oklahoma lacked jurisdiction to prosecute him, and Oklahoma has known for many years that the State could not prosecute Indians for committing crimes on reservations in Oklahoma. But, the state chose to do so any way knowing that there was nothing Indians could about it in a state court, which is true to this day for all Indians who have been convicted for committing a crime Oklahoma. It's been said that no one is above the law, but Oklahoma is and has placed its self above all other states. Just look at how many Indians is illegally incarcerated in Oklahoma state prisons throughout Oklahoma; and after *"McGirt's ruling"* no Indian can get any relief from the State's misunderstanding of jurisdiction to prosecute Indians who commits crimes in Indian country.

When will the Indians, such as Petitioner, incarcerated in Oklahoma be set free from unlawful convictions that are void judgments from the beginning, due to the lack of jurisdiction to prosecute? The Treaties really don't mean anything to Oklahoma, do they? If the Treaties meant something, Indians wouldn't be in state prisons in Oklahoma, today. Oklahoma has clearly put all Indian back on the *trail of tears*. Again, Indians are to suffer at the hands of a society that has no respect for its own Treaties with the Indian Nations, Thanksgiving.

The Case Should Be Dismissed and Petitioner Discharged From the Custody of Warden at Oklahoma State Penitentiary under *Webb, Apapas, and Hogner*

Oklahoma did not *deny* but admitted that these events took place within the boundary of the Cherokee Nation Reservation and Petitioner has "some Indian blood" a lineal descendant of the *Cherokee Shawnee Tribes* and is a member of the Shawnee Tribe a Federally recognized Tribe of the United States of America. The existence of this evidence is clearly exculpatory. The Petitioner is entitled to discharge from unlawful restraint. The State Oklahoma's failure to disclose the same has prejudiced the Petitioner. Petitioner's case should be dismissed under *Ex parte Webb,* 32 U.S. 769, (1912), *Apapas v. U.S.*, 233 U.S. 587 (1914) and *Hogner v. State*, 500 P.3d 629, 635 (Okla. Crim. App. 2021) since *McGirt* does not present a new rule of criminal proceeding as Oklahoma would like to have this Court to believe. This Court should dismiss Petitioner's case and discharge him from the unlawful custody of the Warden Jim Farris at OSP.

Clearly, the District Court of Craig County had no authority to act and any actions by the court were a nullity. A court, like the District Court of Craig County, that does not have the power to decide an issue on the merits or enter judgment if it does not have jurisdiction over the subject matter, as pointed out in *Webb and Ramsey*, must vacate the judgment. The locus of the crimes has never been in dispute, by Oklahoma, nor the petitioner's status as an Indian. The question of jurisdiction in the District Court is purely a legal one based upon facts undisputed in the record.

Petitioner continues to argue that his imprisonment is illegal, that the judgment of conviction is void, that the crimes is not cognizable by the laws of Oklahoma but was solely within the jurisdiction of the federal courts. Neither upon the trial court nor in the federal courts was any question of jurisdiction raised, until post-conviction relief application. A void judgment has long been described as a "*dead limb upon the judicial tree, which may be*

looped off at any time." *Pettis v. Johnson*, 1920 OK 224, ¶ 10, 190 P. 681, 682, Okla. 227, (it can bear no fruit to the plaintiff) (but is a constant menace to the defendant, and may be vacated by the court rending it at anytime on motion of a party or person affected thereby," either before or after the expiration of three years from the rendition of such motion is unhampered by a limitation of time). In a collateral attack by habeas corpus, upon a judgment of conviction regular on its face, the judgment will not be vacated unless it is void as having been rendered without jurisdiction. *In re York*, 1955 OK CR 55, 283 P.2d 567. A judgment entered without jurisdiction over the parties is void ab initio and lacks legal effect. *794 N.E.2d 141.* The writ of habeas corpus will not issue unless the judgment and sentence attacked is void on its face. *Ex parte Wallace*, 162 P.2d 205.

Petitioner is entitled to the same relief this Court has granted other petitioners in same position as Petitioner, when the judgment and sentence was void, or the court was without jurisdiction to render the judgment and sentence, like in Petitioner's case, the trial court lacked jurisdiction to prosecute and punish Petitioner an Indian whose crime occurred in Indian Country. See *Ex parte Wright,* 145 P.2d 772; *Ex parte Frazier,* Okl. Cr. App., 146 P.2d 849; *Ex parte Mayberry*, Okla. Cr. App. 148 P.2d 785; *Ex parte Davis,* Okl. Cr. App., 150 P.2d 367; *In re Maynard,* Okl. Cr. App., 153 P.2d 505; Ex *parte Smith*, 83 Okl. Cr. 199, 174 P.2d 851. The jurisdiction of the court to render a particular judgment and sentence by which a person is imprisoned is a proper subject of inquiry on habeas corpus. See *Ex parte Grant,* 32 Okl. Cr. 217, 240 P. 759.

The demands of the Constitution, as envisaged by the Court has moved Federal and State Courts to acknowledge that due process requires corrective judicial process in the nature of *coram nobis* be available to expunge a void judgment when all other avenues of judicial relief are unavailable. *United States v. Morgan*, 202 F.2d 67 (2nd. Cir. 1953). *Ex parte Siebold*, 100 U.S. 371, 376-77, 251 L.Ed. 717 (1879((("An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."). "***trial court may lose jurisdiction if in the course of its proceedings fundamental rights accused are denied without accused having waived them. *Petition of Dare*, Okla. Crim. App., 370 P.2d 846 (1962).

Petitioner has never waived jurisdiction in his case, even though the trial court wishes he did. Jurisdiction to try criminal case is conferred by law and cannot be conferred by consent, but

accused may waive a constitutional right or privilege designed for his protection where no question of public policy is involved. *Ex parte Gray*, Okla. Crim. App., 74 Okla. Crim. 200, 124 P.2d 430 (1942). This Court has jurisdiction of Petitioner's matter because Petitioner has no available remedies in the state courts to exhaust other than habeas corpus action, Petitioner's conviction became final before this Court's opinion in *Hogner v. State*, 500 P.3d 629, 635 (Okla. Crim. App. 2022). Petitioner was unable to present *Hogner* on his direct appeal, through no fault of his own.

This Court has authority to grant a writ of habeas corpus under *12 O.S. § 1333*. This writ may be had for the purpose of lack of jurisdiction to render a judgment and sentence, making such void. *12 O.S. § 1334*. A court has a duty to inquire into whether it posses jurisdiction over the subject matter of an action that has been brought before the court. *Dutton v. City of Midwest City*, 353 P.3d 532, 2015 Okl. 51 (2015). This is not a misapplication of *Duton* as the State would like for the Court to accept, it goes to the Court having jurisdiction to hearing petitioner's cause for unlawful restraint against him. Clearly the State cannot denied Petitioner of his day in Court, can it? *McGirt got his bite of the apple because of Murphy* and *Murphy got his bite of the apply by way of habeas corpus from the Tenth Circuit Appeals Court, right?* Which means that petitioner and all Indians also have a bite of this very same apple coming to him and they as well, right? See *id, at 2501 n.9 (Roberts, C.J., dissenting) ("[U]nder Oklahoma law, it appears that there may be little bar to state habeas relief because issues of subject matter jurisdiction are never waived and can therefore be raised on collateral appeal.'" (quoting Murphy v. Royal, 875 F.3d 896, 907 n.5 (10th Cir. 2017), aff'd sub nom. Sharp v. Murphy, 140 S. Ct. 2412 (2020)). But the Court did not embrace any such defenses, instead concluding that "the magnitude of a legal wrong is no reason to perpetuate it." Id at 2480. "[D]ire warnings are just that, and not a license for us to disregard the law." Id. at 2481*. A court has a duty to proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint, or for a continuance thereof, shall discharge the petitioner. 12 Okla. Stat. Ann. 1341. Under state dealing with return of writ of habeas corpus and providing that court shall enforce obedience by attachment, a petitioner should be discharged, where the officer fails to make a return or response and offers no excuse for failure to do so. 12 Okla. Stat. Ann. § 1338.

Petitioner filed in this Court a petition of writ habeas corpus on the 15th day of August 2022, alleging that he was unlawfully restrained of his liberty by Jim Farris Warden of OSP, of McAlester, Oklahoma. Writ to show cause issued by this Court,

and a hearing thereon was set for the 24th day of August, 2022, at 10 A.M. before the Court, the hearing date was stricken. On the 24th day of August, 2022, a response was filed by the Warden. In the Respondent's response the Respondent did not deny that at the time the State prosecuted defendant was a certified enrolled member of the Shawnee Tribe a federally recognized of the United States and the city of Vinita, county of Craig, Cherokee Nation Reservation are all within the boundary of Indian Country, United States and that the crimes that the defendant is accused of committed are crimes that fall under Major Crimes Act and that only the federal government has exclusive jurisdiction to prosecute defendant an Indian and some Indian blood from decedents of Shawnee tribal members, the following list of benefits are available only to Petitioner based on the fact he is an enrolled Shawnee member and had the right to hunt and fish on tribal lands, and the ability to vote in tribal elections, and the right to hold tribal office.

It is the universal holding of the Oklahoma Court of Criminal Appeals that facts duly alleged in a sworn petition for writ of habeas corpus and not denied by the Respondent are considered as admitted and must be taken as true. *Ex parte Burns*, 83 P.2d 610 (Okla. Crim. 1938). *In Ex parte Pruitt*, 31 Okl. Ct. 294, 238 P. 501, the court held: "In a habeas corpus proceeding, where an officer charged with an unlawful restraint neglects to make a return to a rule to show cause the writ should not issue, and the petition, duly verified on its face, shows that the petitioner is by said officer illegally restrained of his liberty, no legal cause for the restraint appearing, such petitioner is entitled to his discharged."In the opinion it is said: "While the court has ample power to enforce obedience to its order by attachment, and require that the sheriff shall make a return to the writ, we are not required to do so, but may proceed in a summary way to determine the cause upon the verified and undenied petition." In *Whitten v. Tomlinson*, 160 U.S. 231, 16 S. Ct. 297, 40 L.Ed. 406, and in *Kentucky v. Powers*, 201 U.S. 1, 34, 26 S. Ct. 387, 50 L. Ed. 633, 648, 5 Ann. Cas. 692, it is held that in a petition duly verified for a writ of habeas corpus "facts duly alleged and not denied are admitted true." To the same effect is Matter of Depue, 185 N.Y. 60, 68, 77 N.E. 798, 800. *In Ex parte O'Connor* (80 Cal. App. 647) 252 P. 730, in the seventh paragraph of the syllabus it is held: "In habeas corpus proceeding, where matters included in petition are not denied in return, they are considered as admitted and must be taken as true." *Ex parte Owens*, 37 Okl. Cr. 118, 258 P. 758.

Petitioner's case is identical to *Hogner's case*, in that Petitioner and *Hogner* are both from Vinita, Oklahoma, and both

are Indians who was both accused of committing crimes in Craig County, the Cherokee Nation Reservation. *See Hogner v. State*, 500 P.3d 629, 635 (Okla. Crim. App. 2022). The Oklahoma Court of Criminal Appeals Court recently handed down its opinion *that Congress did not disestablish the Cherokee Nation Reservation*, which really just reaffirms *Webb's* case. *Webb* and *Hogner* affirm that Petitioner's judgment and sentence in his cases are *void ab initio.*

Lack of Jurisdiction - Respondent cites *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.2d 686, *cert. denied.* regarding State's jurisdiction to prosecute Indians of crimes committed in Indian country, Cherokee Nation Reservation, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), is easily distinguishable because the defendant therein judgment was final and that *McGirt* presents a new rule in criminal procedure. Respondent misstates the holding in *McGirt, McGirt* is not a new rule of criminal procedure in Oklahoma, in *Ex parte Webb,* 32 U.S. 769, (1912), the Court held that the City of Vinita, County of Craig is within the boundaries of the Cherokee Nation Reservation, and that Indians or non-Indians who commits felony crimes within the Cherokee Nation Reservation shall be prosecuted by the federal government exclusively not the State of Oklahoma. *McGirt* is following the U.S. Supreme Court's opinion in *Webb's* case on Indian country status in Oklahoma in 1912. *New Rule of Criminal Procedure?" I don't think so."*

In *McGirt* the Court reversed the conviction and remanded with instructions to dismiss the charges and to discharge the defendant from the custody of the State for lack of jurisdiction prosecute and sentenced him. The United States Supreme Court in the case of *Apapas v.* to *U.S.*, 233 U.S. 587 (1914) held that "murder committed by Indians on a reservation within a state is a crime against the United States, punishable by Penal Code, Act of March 4, 1909, c. 321, §328, 35 Stat. 1151, 18 U.S.C.A. §§1151, 1153, 3242. Long before *McGirt* the Supreme Court has long required a clear expression of the intention of Congress before the state or federal government may try Indians for conduct on their lands. *Webb*. Land in Oklahoma reserved for the Cherokee Nation was not disestablished and has always remained "Indian country" under federal Major Crimes Act, even in 2007 when the State alleged that Petitioner had committed crimes in the city of Vinita,

county of Craig, Oklahoma. What the State left out was that Defendant is an Indian and that the city of Vinita, county of Craig, Oklahoma, is within the boundary of the Cherokee Nation Reservation of the United States. Authority of United States to punish crimes committed by or against Indians continued after the admission of Oklahoma as state, though authority to punish other crimes therein was ended. Rev. St. § 2145, 25 U.S.C.A. § 217, confirms that exclusive jurisdiction to prosecute petitioner an Indian is vested in the United States under the *Major Crimes Act*, 18 U.S.C. § 1153.

Petitioner's case is subject to the preexisting law that the City of Vinita, Oklahoma, Indian Country, Cherokee Nation Reservation, is under the exclusive laws of the Federal Government to prosecute Indians committing felony crimes in the City of Vinita, Oklahoma. See *Ex parte Webb* ,32 U.S. 769, 1912, the district court as well as the Court of Criminal Appeals has refused to recognized *Webb* as preexisting way before *Murphy* and *McGirt*, the United States Supreme Court recognized the Cherokee Nation Reservation as Indian Country in 1912 where *Webb* committed a felony crime in Vinita, Cherokee Nation Reservation, Indian Country. Why is it so hard for the district court and the Court of Criminal Appeals to recognize that Congress did not disestablish the Cherokee Nation Reservation, when Oklahoma became a State?

Habeas Corpus Procedure Act is the only available statutory or common law proceeding to vindicate petitioner's claim, since post-conviction is not available to petitioner to vindicate petitioner's claim. Again *McGirt* is not a new rule, *McGirt's* holdings is not a new rule for purposes of *Teague* restriction on applying or announcing new rule in cases on collateral review, if it breaks new ground, imposes new obligation on state or federal government or was not dictated to be precedent existing at time defendant's conviction became final. *Webb* and *Apapas* was dictated to be precedent existing at time defendant's conviction became final. *McGirt* is not contrary to the decisions of *Webb* or *Apapas* it was unlikely that reasonable jurists in 2007 would have found that Oklahoma's scheme satisfied *section 1, art. 3 of the Constitution of the United States* is the power to try the classes of cases specified in section 2 of that article, Indian

country. To satisfy the requirements of article 3, states must limit and channel jurisdiction to the federal government where Indians and crimes occurs in Indian country, states must confer jurisdiction to prosecute Indians to the federal government. In *McGirt* the State admits that it knowingly prosecuted Indians for committing crimes occurring in Indian country in Oklahoma for over 100 years without having jurisdiction to do so. Why change it now, and for those Indians already in prison, so what. Title 12 O.S. § 1331 give petitioner ample standing to attack the conviction. Is a judgment void if a court acts without jurisdiction. A final judgment is void for purposes of rule governing relief from judgment only is the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law. *Craigslist, Inc. v. Hubert*, 278 F.R.D. 510 (2021). U.S.C.A. Const. Amend. 5. Oklahoma's Court system is one of injustice when it has to admit its wrong doings.

Under Title 12 O.S. § 1342 The Only Question For This Court Is Whether The Craig County Court Was Of Competent Jurisdiction To Impose Judgment, If Not Is Judgment Void And Can It Be Vacated

Petitioner has a constitutional right under Oklahoma's law and Constitution to challenge on habeas corpus to the lack of jurisdiction of the Craig County judgment even if the judgment is final does to direct appeal being final. Petitioner requested that the district court of Pittsburg County reopen his case under 1342[6] and

[6] Federal Rules of Civil Procedure 60(b) provides an 'exception to finality' that 'allows a party to seek relief from a final judgment, and request reopen of his case, under a limited set circumstances.'" *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269-70, 130 S. Ct. 1367, 176 L.Ed.2d 158 (2020) (*citation omitted*) (*quoting Gonzalez v. Crosby*, 545 U.S. 524, 528-29, 125 S.Ct. 2641, 162 L. Ed.2d 480 (2005). Petitioner's writ under that rule seeks relief from the final judgment in his 2007 case under both Rule 60(b) (4) and Rule 60 (b) (6). Rule 60 (b) (4) states that the court must relieve a party from a judgment if "the judgment is void.' FED. R. CIV. P. 60 (b) (4). Rule 60 (b) (6) provides courts with authority to relieve parties from a judgment for any "reason that justifies relief." How long must I go down this Trial of Tears for freedom from the void judgment of the district court of Craig county when Williams and Romannose, as well as the district court of Craig county and the Department of Justice made it very clear that in 20o2 through 2018, before the *McGirt* case the Cherokee Nation Reservation was still intact and that the federal government had exclusive jurisdiction to prosecute Indians committing in Indian country. The State has yet presents any evidence or law that it had jurisdiction to prosecute me for a crime that occurred on the Cherokee Nation Reservation in

relieve from the Craig county judgment being that the judgment is void. 1342 provides courts with authority to relieve parties from a judgment for any "reason that justifies relief. Petitioner presented evidence to the district court of Pittsburg County that justifies relief on a void judgment on lack of jurisdiction to prosecute and sentence Petitioner, an Indian, whose crimes occurred within the Cherokee Nation Reservation a part of Indian Country of the United States.

Process issued on final judgment. Where the court or officer was without jurisdiction or power to render judgment or issue process for the imprisonment of a part, the imprisonment was illegal, and the courts will relieve by habeas corpus. *In re Patwald*, 5 Okla. 789, 50 P. 139 (1897); *Ex parte Harlan*, 1 Okla. 48, 27 P. 920 *1891).

It is a material fact that under the provisions of 18 U.S.C.A. §§ 1151, 1153, 1154, 1161, 1162 the process issued on the Craig County final judgment of the district court not a court of competent jurisdiction to prosecute and sentenced Petitioner, who committed his crimes in Indian country, Petitioner being a member of a Federally recognized Tribe, Shawnee Tribe of Oklahoma. Petitioner is being detained by virtue of a process issued on what is called a final judgment of a "court of no competent jurisdiction, the district court of Craig County clearly pointed out in *Williams' and Romannose's cases* that the court had no jurisdiction to prosecute *Williams and Romannose* because both were Indians and their crimes occurred within the Cherokee Nation Reservation in 2002 through 2018. But, the State argues that it had jurisdiction in Petitioner's case in 2007 to render the particular judgment in Petitioner's case, if the court lacked competent jurisdiction to prosecute *Williams* and *Romannose* for crimes occurring in 2002 through 2018, wouldn't this be so for Petitioner as well. *See Former Preacher Charged for the Sexual Abuse of Five Minors*

2007, the State claims it is okay to hold me in prison under a void judgment of Craig County. Being that Craig County lacked jurisdiction to prosecute and sentence me, then that would mean that this Court lacked jurisdiction over any appeal, in that the Craig County was void and reality does not exist. I am serving a life sentence, 40 year and 30 years sentence, in violation of the Treaty with the Cherokee Nation and the United States.

2021 WL 5357247 (D.O.J.) and Stilwell Man Charged with Sexual Abuse of a Child in Indian Country 2021 WL 2888107 (D.O.J.).

In April of 2021 *Roy Edward Williams* a former preacher was previously charged in Craig County District Court. *Williams* is alleged to have committed sex crimes against children in Vinita starting on or about November 2002 and as late as December 2018. The Craig County District Court dismissed the charges against *Williams* because is a *Cherokee citizen* and the alleged crimes occurred in or near *Vinita, which is within the Cherokee Nation Reservation.*

Williams started committing his crimes in 2002; this was five years before Petitioner was alleged to have committed my crimes in Vinita in 2007. This evidence the State hid this from Petitioner because the State knows that Petitioner should have been prosecuted by the Federal Government like *Williams*. The only differences between Petitioner's and *Williams'* cases are the statute of limitations. The statute of limitations in Petitioner's case expired fives after 2007 which was 2012. The statute of limitation in *Williams'* case started the day the victims came forward against *Williams*. Being that the statute of limitation has run in Petitioner's cases the State claims that it had jurisdiction to prosecute me in 2007. There is no way the State had jurisdiction to prosecute me for any crimes occurring in Vinita, Craig County, Cherokee Nation Reservation, within Indian Country in 2007. When the State made it very clear that the crimes allegedly committed in 2002 by *Williams* is alleged to have occurred within the Cherokee Nation Reservation, as was Petitioner's.

Again, a Stilwell man *David Anthony Romannose* was charged after allegedly sexually assaulting a minor on July 4, 2017 near Vinita. The violation occurred in *Indian Country* on the Will Rogers Turnpike/Interstate Highway I-44 near Vinita, in Craig County, within the Cherokee Nation Reservation. Romannose and victim or both Indians.

Here again, *Romannose's case* occurred 10 years after Petitioner's cases of 2007 and like *Williams case Romannose* was prosecuted by the Federal Government, for crimes committed in Indian Country before *Murphy* or *McGirt* was decided by the

Courts that the city of Vinita, county of Craig in 2002 was within the Cherokee Nation Reservation, Indian Country.

This writ of habeas corpus involves an evaluation of the State's evidence, the possibility that the Petitioner has some Indian blood, that the Petitioner has a tribal membership with the Shawnee Tribe and that the Petitioner's personal qualification for the Major Crimes Act relate to the 1866 Treaty with the Cherokee Nation and the United States; and as well as pertinent factors and other cases in which habeas corpus relief has been granted based on the lack of jurisdiction to prosecute causing the judgment and sentence to be void, just as Petitioner's judgments and sentences are void also for lack of subject matter jurisdiction. See *Deerleader v. Crow*, 2021 WL 150014.

Petitioner is under federal guardianship. The federal statutes which gives federal courts exclusive jurisdiction over the crimes in question when committed by an Indian on an Indian reservation does not define "Indian' for the purpose of the Acts. And petitioner have not been cited to any sections of a federal act, and he have been unable to find any, which purports to give a definition of the term 'Indian' for purposes of jurisdiction in criminal cases. None of these cases support Respondent's case.

"Jurisdiction to prosecute Indian defendants in State courts" - No cases cited by Respondent. There was no evidence of some jurisdiction to prosecute Indian defendants in State courts presented by the Respondent. Neither the statute nor cases cited by Respondent support that the district court of Craig County did have jurisdiction to prosecute or sentence, petitioner, an Indian alleged to have committed crimes within the boundary of the city of Vinita, the county of Craig, the Cherokee Nation Reservation, Oklahoma.

Assault – *State of Oklahoma vs. Kim Lynn Mason* involve an Indian committing assault in Indian Country where the Court clearly is aware the crimes occurred within the Cherokee Nation Reservation, Indian country. *Ex parte Webb,* 32 U.S. 769, (1912). Petitioner with agree *Webb* that the federal government has jurisdiction to prosecute him, and that he should have been easily discharged released from the custody of the State of Oklahoma because the district court of Craig County, Oklahoma lacked

jurisdiction to prosecute him an Indian and the alleged crimes occurring within the Cherokee Nation Reservation, Indian country. *Ex parte Webb,* 32 U.S. 769, (1912).[7]

Title 18 Section 1153 of the United States Code, known as the Major Crimes Act, grants exclusive federal jurisdiction to prosecute certain enumerated offenses committed by Indians within Indian Country. It reads in relevant part as follows: "Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A, incest, a felony assault under section 113, an assault against an individual who has attained the age of 16, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian Country, shall be subject to the same law and penalties as all other person committing any of the above offenses, within the exclusive jurisdiction of the United States."[8]18 U.S.C. § 1153(a) (2013).

The two counts, the assault on a police officer charges, fits somewhat squarely within the Major Crimes Act and its exclusive federal jurisdiction, is among these enumerated crimes is much less clear. It may constitute a "felony assault under section 113", but that is not something we must decide today. If the assault on a police officer is not covered by section 1153, it is subject to the Act's sister statute, 18 U.S.C. §1152 (1948), which applies to other offenses and provides for federal or tribal jurisdiction to prosecute

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[7] In *Webb*, the defendants' filed a writ of habeas corpus seeking to have the felony charges dismissed because the crimes did not occur in Indian country and the federal government lacked jurisdiction to prosecute them as Indians or non-Indians, since Oklahoma became a state. The Supreme Court rejected the claim of lack of jurisdiction prosecute Indians and non-Indians for crimes that occur in the city of Vinita, county Craig, Cherokee Nation Reservation, Oklahoma, Indian country, United States. But, being that the State is so greedy it doesn't want to share the apple that it took from the Indian in the first place. Why?

[8] Petitioner's drug charges fall under the provisions of Title 18 U.S.C.A. §§ 1151, 1154, 1162. Petitioner's case is subject to the preexisting law that the City of Vinita, Oklahoma, Indian Country, Cherokee Nation Reservation, is under the exclusive laws of the Federal Government to prosecute Indians committing felony crimes in the City of Vinita, Oklahoma. See *Ex parte Webb* ,32 U.S. 769, 1912, the district court as well as this Court has refused to recognized *Webb* as preexisting way before *Mc Girt*, the United States Supreme Court recognized that the Cherokee Nation Reservation as Indian Country in 1912 where Webb committed a felony crime in Vinita, Cherokee Nation Reservation, Indian Country. Why is it so hard for the district court and this Court to recognize that Congress did not disestablish the Cherokee Nation Reservation, when Oklahoma became a State?

such an assault by an Indian within Indian country. See *State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403 ([T]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.")

Respondent fails to cite any cases to support its proposition. That all convictions before *McGirt*, such as petitioners for crimes allegedly committed in Indian country must not be dismissed nor is petitioner discharge from unlawful restraint by the Warden at OPS of the Oklahoma Department of Corrections by state habeas corpus. The State of Oklahoma lacked jurisdiction to prosecute petitioner because he is an "Indian" and the crimes occurred in "Indian Country," under the Major Crimes Act, 18 U.S.C. § 1153(a) ." 12 Okla. Stat. Ann. § 1339, provides that the return must be signed and verified by the person making it who shall state: First: The authority or cause of restraint of the party in his custody. Second: If the authority be in writing he shall return a copy and produce the original on the hearing. Third: If he has had the party in his custody or under restraint, and has transferred him to another, he shall state to whom, the time place and cause of the transfer. The State did not provide a verified return and matters included in petition are not denied in return, they are considered as admitted and must be taken as true. *Ex parte Owens*, 37 Okl. Cr. 118, 258 P. 758.

The cases cited by Respondent and distinguishable and involve issues of "jurisdiction" is not authentication that the State had jurisdiction to prosecute defendant an Indian of any crimes occurring in the city of Vinita, county of Craig, Cherokee Nation Reservation, Oklahoma, Indian country, or that defendant should not be allowed his "bite at the apple" through this Honorable Court, that the Respondent speak of now. If the petitioner had been allowed his "bite of the apple" in the first place by the State petitioner would not have to be allowed his "bite at the apple" through this Honorable Court now. Where is the equal protection rights to the law evenly when comes to Indians committing crimes in Indian Country and be prosecuted by state courts instead of being prosecuted by the federal courts?

This is a list of all the cases at this time found on the City of Vinita, county of Craig and the Cherokee Nation Reservation existing way before *McGirt* making the very same claim about Indians, Indian country, crimes and prosecution of Indians by the federal government, not the State. See *Treaty with the Cherokee*, 1866; *Davenport v. Buffington*, 1 Ind. T. 424 (1898); *Kelly v.*

Churchill, 4 Ind. T. 110 (1902); *U.S. Exp. v. Friedman*, 191 F. 673 (8th Cir. 1911); *Ex parte Webb*, 32 U.S. 769, (1912); *United States v. Wright*, 229 U.S. 226 (1913); *Browning v. U.S.*, 6 F.2d 801 (8th Cir. 1925); *U.S. v. Ramsey*, 271 U.S. 67 1926); *U.S. V. Sands*, _____ F.2d_____ (10th Cir._____); *State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403; *Spears v. State*, 2021 WL 1231542.

Mailbox Rule

On October 17, 2022, the Oklahoma Court of Criminal Appeals Court issued an Order Declining Jurisdiction over Petitioner's request for extraordinary relief, which was due for filing with the Court on or before October 10, 2022, but was not filed until October 11, 2022. Petitioner failed to file the request for extraordinary relief with the Clerk of the Court within thirty (30) days from the filing date of the District Court's order as required by Rule 10.1(C), Rules *of the Oklahoma Court of Criminal Appeals*, Titled 22, Ch. 18, App. (2022). Petitioner's request was not timely filed. The Court Declines jurisdiction and Dismisses this matter.

On October 5, 2022, Petitioner turned over to correctional officials his appeal for extraordinary relief for filing within the 30 days statute of limitations as required by Rule 10.1(C), Rules *of the Oklahoma Court of Criminal Appeals*, Titled 22, Ch. 18, App. (2022). Petitioner's request was timely filed. See *INMATE'S REQUEST FOR DISBURSEMENT OF LEGAL COST.*

Oklahoma recognizes a "mailbox rule" for appeals filed pro se incarcerated prisoners; the date the prisoner turns a petition in error to correctional authorities for mailing to the court is the date the petition in error is deemed filed. *Halladay v. Board of County Com'rs of County of Okmulgee*, 90 P.3d 578 (OK 2004). Also see *Silverbrand v. County of Los Angeles*, 92 Cal. Rptr. 595, 609 Cal. LITIGATION-PRISONERS. Prison-delivery rules apply to a self-represented prisoner's filing of appeal in a civil case.

The Court should have adopted the rule in *Woody v. State ex rel. Dept. of Corrections*, 1992 OK 45, 833 P.2d 257, citing the United States Supreme Court case of *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379, which dealt with the timeliness of an inmate's filing of a pro se notice of appeal. The *Woody* Court determined that, in regard to incarcerated prisoners' appeals, a "mailbox" rule was necessary to afford pro se inmates equal protection and to prevent a denial of equal access to the courts. The rule is now codified as Supreme Court Rule 1.4(d), 12 O.S. 2001, ch. 15, app.1.

Petitioner did not have control over the submission of his appeal for extraordinary relief to the Oklahoma Court of Criminal Appeals and could never be sure that his appeal for extraordinary relief would ultimately get stamped "filed" before the running of the statute of limitations. Rule 10.1(C), Rules *of the Oklahoma Court of Criminal Appeals*, Titled 22, Ch. 18, App. (2022).

The Court should have found that Petitioner timely file his request for extraordinary relief once Petitioner turned over to correctional officials his appeal for extraordinary relief for filing within the 30 days statute of limitations as required by Rule 10.1(C), Rules *of the Oklahoma Court of Criminal Appeals*, Titled 22, Ch. 18, App. (2022). The Court should have recalled its Order declining jurisdiction and dismissing Petitioner's matter and reinstate jurisdiction over Petitioner's appeal for extraordinary relief as timely filed, because Petitioner followed the rules to prefect his habeas corpus appeal. Once again the State of Oklahoma is willing to do anything to keep Petitioner from having a fair opportunity to be heard on his issue of lack of Oklahoma having jurisdiction to prosecute him, and that there has always been preexisting laws on this issue way before *Murphy* or *McGirt,* by this Court. Oklahoma just refuses to acknowledge this Court's preexisting laws on crimes committed by Indians in Indian Country from 1912 thru 1926. *McGirt* is in no way a new procedural rule to collateral attack the trial court's lack of jurisdiction to prosecute a Indian alleged to have committed a crime in Indian Country, as stated through Petitioner's state habeas corpus Petitioner cited case law to support his argument. But Oklahoma, rather make the Indians in Oklahoma prison system to suffer once again the Trial of Tears as our decedents did many years before us. Sure we are not being forced to walk across country, but we are walking across in so many ways and we are suffering, because we are trying to fight a fight that Oklahoma courts reject at any cost to the Indians in Oklahoma prisons. Oklahoma and the United States are both aware of the suffering Indians are going through. Where is the protection the United States pledged to the Indians in the Treaties made with the Indians, to keep Indians from being punished by states for crimes committed by Indians in states within the boundary of a reservation, Indian country? The Indians have not broke the treaties, but the United States did the very first time the United States allowed a state to prosecute an Indian accused of committing a crime in Indian country. Am I wrong for arguing the truth that Indians are still suffering under the hands of the United States of America? When will the suffering stop?

If Oklahoma lacked jurisdiction to prosecute Petitioner and all other Indians, in the first place, wouldn't this mean that Petitioner's and all other Indians judgment[s] are never final and can be appealed at any time? Which means that the Judgment of the State district courts are never final, which would stand to say that the appeal to the Oklahoma Court of Criminal Appeals by Indians can never become a final judgment, based on the fact that Oklahoma lacked jurisdiction to prosecute the Petitioner all other Indian.

Conclusion

This Court should find Petitioner is an Indian within the meaning of 18 U.S.C.A. § 1151, and that the crimes at issue occurred within historical boundaries of the Cherokee Nation. Further, this Court should find, as set out above, that the Cherokee Nation reservation boundaries as established by treaty have not been diminished or disestablished. By applying the decision in *Webb* to the Cherokee Nation, this Court should find that the Cherokee reservation is Indian country under 18. U.S.C.A. § 1151(a), also by applying the decision in *Ramsey* to the Cherokee Nation, this Court should find that the Cherokee reservation is Indian country where the crimes occurred under 18 U.S.C.A. §1153 and therefore the State of Oklahoma lacked subject matter jurisdiction, voiding his Craig County, Oklahoma convictions.

Respectfully submitted,

Kim Mason

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Oklahoma State Penitentiary E-2-25
P.O. Box 97
Mc Alester, Oklahoma 74502-0097
PETITIONER

CERTIFICATE OF MAILING

I, Kim Lynn Mason, hereby certify that a true and correct copy of the foregoing instrument was mailed on the 15th day of February 2023, by placing the same in the U.S. mail here at the Oklahoma State Penitentiary, P.O. Box 97, McAlester, Oklahoma, 74502-0097, with first class postage prepaid to: District Attorney of Pittsburg County, Mc Alester, Oklahoma for Jim Farris, Warden, Oklahoma State Penitentiary, 1301 N. Western, Mc Alester, Oklahoma 74502

Kim Mason